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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 UNITED STATES OF AMERICA,  
12 Petitioner,  
13 v.  
14 GUILLERMO MOKAY,  
15 Respondent.  
16

Case No.: 14-CR-0505-L

**ORDER DENYING MOTION FOR  
MODIFICATION OF TERM OF  
IMPRISONMENT PURSUANT TO  
18 U.S.C. § 3582(C)(2)**

17 On March 26, 2015, Petitioner Guillermo Mokay (“Petitioner”), proceeding *pro se*,  
18 filed a motion for relief of sentence pursuant to 18 U.S.C. § 3582(c)(2). Petitioner’s  
19 motion is based upon retroactive Amendment 782 of the United States Sentencing  
20 Guidelines that pertain to drug trafficking offenses which became effective November 1,  
21 2014. The Government filed an opposition to the motion. For the reasons set forth  
22 below, Petitioner’s motion is **DENIED**.

23 **BACKGROUND**

24 Petitioner pled guilty to Importation of Cocaine in violation of 21 U.S.C. §§ 952  
25 and 960. On June 9, 2014, this Court sentenced Petitioner to 46 months, finding that the  
26 base offense level was 32, which was reduced to 30 with a minor role reduction.  
27 Petitioner was in a criminal history category IV. A 3 point reduction was applied for  
28 acceptance of responsibility, along with a 2 point reduction for role, for an adjusted base

1 offense level of 25. After a 4 point reduction for Fast Track, and a 2-level reduction for  
2 the expected November 1, 2014, change in the Guidelines, the resulting level was 19,  
3 with a range of 46-57 months. After considering the factors in 18 U.S.C. § 3553(a), the  
4 Court sentenced Petitioner to 46 months.

## 5 DISCUSSION

6 Petitioner now moves for a reduction of his sentence, pursuant to 18 U.S.C. §  
7 3582(c)(2), based on Amendment 782 to the Sentencing Guidelines. Amendment 782  
8 reduces the base offense level for drug trafficking offenses in § 2D1.1(c) of the  
9 Sentencing Guidelines by generally reducing the offense level in the § 2D1.1 Drug  
10 Quantity Table by two levels. *See* Amendment 782, Supplement to Appendix C,  
11 Amendments to the Guidelines Manual. Petitioner falls within the purview of this  
12 change.

13 A motion for reduction of sentence under § 3582(c)(2) “is simply a vehicle through  
14 which appropriately sentenced prisoners can urge the court to exercise leniency to give  
15 [them] the benefits of an amendment to the guidelines.” *United States v. Townsend*, 98  
16 F.3d 510, 513 (9th Cir. 1996) (quoting *United States v. Whitebird*, 55 F.3d 1007, 1011  
17 (5th Cir. 1995) (internal quotation marks omitted)). Whether to reduce a sentence under  
18 § 3582(c)(2) is a discretionary decision. *See* 18 U.S.C. § 3582(c)(2) (“[T]he court *may*  
19 reduce the term of imprisonment.”) (emphasis added); *Townsend*, 98 F.3d at 512 (“[T]he  
20 decision whether to reduce a sentence under § 3582 is within the discretion of the district  
21 court judge.”); *United States v. Cueto*, 9 F.3d 1438, 1440 (9th Cir. 1993) (“Courts have  
22 discretion to reduce a previously imposed term of imprisonment when the Sentencing  
23 Commission reduces the sentencing range, and the reduction is ‘consistent with  
24 applicable policy statements issued by the Sentencing Commission.’ ”) (quoting 18  
25 U.S.C. § 3582(c)(2)).

26 In determining whether a sentence should be modified following amendment of the  
27 Guidelines, the Court should consider the term of imprisonment that it would have  
28 imposed had the amendment to the Guidelines been in effect at the time the particular

1 defendant was sentenced. U.S.S.G. § 1B1.10(b). In addition, the Court must consider the  
2 18 U.S.C. § 3553(a) factors<sup>1</sup> and the danger to the public created by any reduction in a  
3 defendant's sentence. *Id.* at cmt. n. 1(B). The Court may also consider the defendant's  
4 post-sentencing conduct. *Id.*

5 Applying the amended Guidelines, Petitioner's new base offense level would now  
6 be a 30, rather than a 32. Petitioner remains in a criminal history category IV. Neither  
7 the Fast Track departure nor the role variances are calculated in the amended guidelines.  
8 Petitioner has already received the benefit of Amendment 782's 2-point reduction  
9 because the Court anticipated the enactment of Amendment 782 and included it in  
10 Petitioner's calculation. Therefore, the amended adjusted offense level would be 25 with  
11 a range of 84 to 105 months.

12 When the Court previously considered the §3553(a) factors at Petitioner's  
13 sentencing, the Court believed that a below-Guideline sentence was appropriate. After  
14 considering the §3553(a) factors anew, the danger to the public created by any reduction  
15 in Petitioner's sentence, the Court finds no further reduction in Petitioner's sentence is  
16 warranted. Petitioner's original 46 month sentence is still less than the low-end of the  
17 new Guideline range.

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22 <sup>1</sup> Section 3553(a) directs a court to consider the following factors in determining the particular sentence  
23 to be imposed: "(1) the nature and circumstances of the offense and the history and characteristics of the  
24 defendant; (2) the need for the sentence imposed: (A) to reflect the seriousness of the offense, to  
25 promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate  
26 deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D)  
27 to provide the defendant with needed educational or vocational training, medical care, or other  
28 correctional treatment in the most effective manner; (3) the kinds of sentences available; (4) the kinds of  
sentence and the sentencing range established for: (A) the applicable category of offense committed by  
the applicable category of defendant as set forth in the guidelines... (5) any pertinent policy statement...  
(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have  
been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the  
offense." 18 U.S.C. § 3553(a).

1 **CONCLUSION**

2 Because Petitioner's original sentence is lower than his amended guidelines, he is  
3 not eligible for a further reduction. Moreover, Petitioner was released from custody on  
4 June 30, 2017, making his motion moot. Based on all of the above considerations,  
5 Petitioner's motion for a reduction in his sentence is **DENIED**.

6 **IT IS SO ORDERED.**

7  
8 Dated: November 9, 2017

9   
10 Hon. M. James Lorenz  
11 United States District Judge  
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13 COPIES TO:

14 PETITIONER

15 U.S. ATTORNEY'S OFFICE  
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